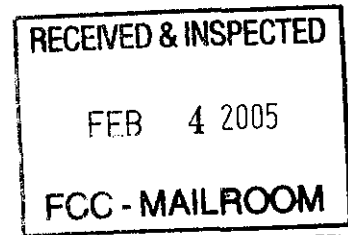


LAUREN A. COLBY
ATTORNEY AT LAW
POST OFFICE BOX 113
FREDERICK, MARYLAND 21705-0113



TELEPHONE
301-663-1086
FACSIMILE
301-695-8734
E-MAIL
lac@lcolby.com

10 EAST FOURTH STREET
FREDERICK, MARYLAND 21701-5257

February 3, 2005

DOCKET FILE COPY ORIGINAL

VIA FEDERAL EXPRESS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

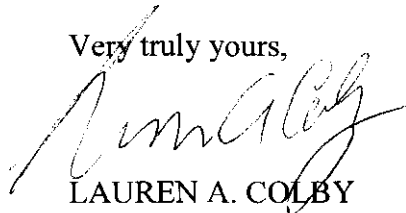
Re: Petition for Rulemaking
Amendment of Section 73.21 and 73.37 of the Commission's
Rules to Provide for Facilities Changes by Stations Operating in
the Expanded AM Band (1605-1705 kHz)

Dear Ms. Dortch:

On February 1, 2005, this office sent you four copies of certain Comments dealing with the Expanded Band, addressed to the Audio Division.

We desire to have these Comments circulated to the Full Commission. We are, therefore, resubmitting them at this time with the requisite number of copies for a Full Commission circulation.

Very truly yours,



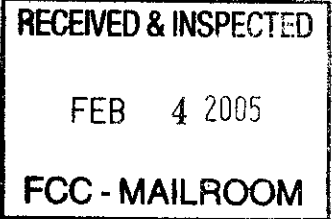
LAUREN A. COLBY
Attorney

LAC/kam

Enclosures

019

Before the
Federal Communications Commission
Washington, D.C. 20554



In the matter of:

Amendment of Section 73.21 and 73.37,)	RM No. 11136
of the Commission's Rules to Provide for)	
Facilities Changes by Stations Operating in)	
The Expanded AM Band (1605-1750 kHz))	
)	
InterMart Broadcasting of Georgia Inc.)	
)	
Rama Communications, Inc. and)	
)	
Multicultural Radio Broadcasting, Inc.)	
)	
To: The Chief, Audio Division		

COMMENTS OF INTERMART BROADCASTING OF GEORGIA, INC.,
RAMA COMMUNICATIONS, INC., AND
MULTICULTURAL RADIO BROADCASTING, INC.

Law Office of
LAUREN A. COLBY
10 East Fourth Street
PO Box 113
Frederick, Maryland 21705-0113
(Counsel for InterMart Broadcasting
of Georgia, Inc. and Multicultural Radio
Broadcasting, Inc.)

PUTBRESE, HUNSAKER
& TRENT
200 South Church Street
Woodstock, VA 22664
(Counsel for Rama
Communication, Inc.)

TABLE OF CONTENTS

	<u>Page</u>
Summary	i
Table of Authorities	ii
Table of Administrative Cases	iii
I. The Need for Requested Relief	1
II. Sound Considerations of Public Policy Require the Adoption of the Rules Proposed by the Petitioners	3
III. The Rule Changes that We Propose Offer Opportunities To Expanded Band Licensees, Without Jeopardizing Any Licensee's Opportunity to Operate Its Expanded Band Station Without Electrical Interference	5
IV. Conclusion	10

TABLE OF AUTHORITIES

	<u>Page</u>
<i>Albertson v. FCC</i> , 100 U.S. App. DC 103, 243 F.2d 209 (DC Cir., 1957)	7
<i>Interstate Broadcasting Co. v. FCC</i> , 105 U.S. App. DC 224, 265 F.2d 598 (DC Cir., 1959)	7
<i>Melody Music v. FCC</i> , 345 F.2d 730 (DC Cir., 1965)	5
<i>NBC v. U. S. and CBS</i> , 319 U.S. 190 (1943)	6
<i>Sanders Brothers Radio Station v. FCC</i> , 309 U.S. 470 (1940)	6

TABLE OF ADMINISTRATIVE CASES

	<u>Page</u>
<i>AM Assignment Standards and the Relationship Between AM and FM Broadcast Services</i> , 2 RR 2d 1658 (1964)	7
<i>Ground Wave and Nighttime Sky Wave Service and Interference</i> , 5 FCC Rcd 4489 (1990); 5 FCC Rcd 4482 (1990)	8
<i>Implementation of the AM Expanded Band Allotment Plan</i> , 10 FCC Rcd 12,143 (1995)	9
<i>In re: Review of Technical Criteria of the AM Broadcast Service</i> , 5 FCC Rcd 5014 (1987)	8
<i>Interim Criteria to Govern Acceptance of Standard Broadcast Applications</i> , 23 Pike & Fischer RR 1545 (1962)	7
<i>Letter to Marissa G. Repp, Esquire</i> , DA 04-3554, 2004 WL 2534326 (Audio Division, 2004)	5
<i>Memorandum Opinion and Order</i> , 14 FCC Rcd 3185 (1997)	1
<i>Report and Order</i> , 6 FCC Rcd 6273 (1991)	8

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of:

Amendment of Section 73.21 and 73.37,)	RM No. 11136
of the Commission's Rules to Provide for)	
Facilities Changes by Stations Operating in)	
The Expanded AM Band (1605-1750 kHz))	
)	
InterMart Broadcasting of Georgia Inc.)	
)	
Rama Communications, Inc. and)	
)	
Multicultural Radio Broadcasting, Inc.)	
)	
To: The Chief, Audio Division		

COMMENTS OF INTERMART BROADCASTING OF GEORGIA, INC.,
RAMA COMMUNICATIONS, INC., AND
MULTICULTURAL RADIO BROADCASTING, INC.

InterMart Broadcasting of Georgia, Inc., Rama Communications, Inc., and Multicultural Radio Broadcasting, Inc. (hereinafter, the "Expanded Band Petitioners" or the "Petitioners"), by their attorneys, hereby respectfully submit their Comments in support of the proposed Rulemaking in this proceeding. In support thereof, it is alleged:

I. The Need for the Requested Relief

1. By Report No. 2686, dated January 5, 2005, the Commission gave notice that it had received a Petition for Rulemaking, filed by the above-named Petitioners, seeking to designate certain stations operating in the AM Expanded Band (1605-1705 kHz) as Class B stations, to permit the authorization of such stations to operate with up to 50 kW, and to allow the use of directional antennas by such stations. The Public Notice

specified that Comments pertaining to the Petitioners' proposal should be filed within thirty days, *i.e.*, on or before February 4, 2005. Petitioners hereby submit the following Comments in support of their Petition.

2. By Public Notice, released March 17, 1997, and published at 14 FCC Rcd 3185, the Commission announced that it was releasing a *Memorandum Opinion and Order*, looking towards the implementation of the AM Expanded Band Allotment Plan. In the Public Notice, the Commission identified certain stations operating in the regular portion of the AM Band, which were causing excessive interference to other stations within that band. Each of these stations was offered an opportunity to apply for a station in the Expanded Band, provided that it agreed to surrender its regular AM Band allotment within a specified period of time.

3. Each of the allotments in the Expanded Band were allocated in accordance with Model I. That model simply assumed a required spacing between each of the stations operating in the Expanded Band. Although radio propagation in the Expanded Band, like propagation in the regular AM Band, depends upon a multiplicity of factors (operating power, frequency, ground conductivity, antenna characteristics, etc.), the allotments announced in the March 17, 1997 Public Notice did not take into account any of these factors. Instead, each of the licensees were offered an Expanded Band allotment which simply offered the opportunity to operate with 10 kW day and 1 kW night, non-directional. Each allotment was protected from interference from the others by simply providing a sufficient distance spacing.

4. In selecting the operating power of 10 kW day and 1 kW night, non-directional, the Commission may have thought that it was offering adequate facilities.

And on a theoretical basis, perhaps it was. As a practical matter, however, it turns out that 10 kW day and 1 kW night is not sufficient.

5. As shown in a Supplement filed by the Petitioners in this proceeding, under date of December 15, 2004, there is an enormous difference in efficiency between stations operating in the Expanded Band, and stations operating in the lower portion of the regular AM Band. Assuming ground conductivity of 8 mS/m (which is typical in many parts of the country), it requires only 180 W of power to achieve the same coverage on 540 kHz that an Expanded Band station would achieve on 1700 kHz, using 50,000 W of power. Petitioners have asked their consulting engineer, William G. Brown, to calculate the coverage of a 10 kW station in the Expanded Band as compared with the power needed to develop the same coverage at the lower end of the AM Band (540 kHz). The results of his calculations are shown in the Engineering Statement, attached and marked Exhibit A. As can be seen, it takes only 60 W on 540 kHz to achieve the same coverage that requires 10,000 W in the Expanded Band.¹ These calculations illustrate, dramatically, why Expanded Band licenses need more power to achieve parity with their brethren, operating in the regular AM Band.

II. Sound Considerations of Public Policy Require the Adoption of the Rules Proposed by the Petitioners

6. Eight years have now elapsed between the time when the Commission began allocating stations in the Expanded Band and the present time. During that time period, Expanded Band licensees have found that, due to the poor radio propagation characteristics in the Band, they need to utilize more power and/or directional antennas in

¹ As Mr. Brown shows, the same curves are used for the entire Expanded Band (1610-1700 kHz). Thus, his calculations apply to the entire Expanded Band.

order to properly serve their communities. At least three applications have been granted, allowing the use of directional antennas to achieve increased power at night.²

7. These applications were granted, presumably, pursuant to waivers issued by the FCC staff. These waivers were unquestionably justified. However, the use of waivers as an allocations tool is not sound public policy. In a recent case, two subsidiaries of Clear Channel (Citicasters and Jacor) sought a waiver of the Rule, 73.313(d), which specifies the means of calculating height above average terrain (hereinafter "HAAT") in the FM Band. Citicasters and Jacor argued that their stations in the Denver area should be granted waivers of the Rule to allow them to calculate HAAT by using less than the required 8 radials. The argument was made that because Denver lies on the Eastern edge of the Rocky Mountains, the stations should be permitted to exclude inconvenient radials over the mountains in calculating HAAT, and thereby preserve classification as Class C facilities, even though, if HAAT was calculated in the manner prescribed by the Rules, those stations would be eligible only for Class C1 or Class C0 classifications.

8. The Audio Division firmly rejected the requested waivers. It said:

"We have not accepted the *ad hoc* approach urged by Citicasters and Jacor in these similar situations where service areas may exceed class maximums in certain directions. The impossibility of making meaningful distinctions among these factual situations argues for strict adherence to HAAT averaging methodology, which provides a fair and workable means to establish protection rights. The inclusion of radials that lie over the Rocky Mountains is certainly important – not unimportant – to those communities to the west which are denied

² The applications are WWRU, Jersey City, New Jersey, File No. BP-20030206ACU, Facility ID No. 87123; KDIA, Vallejo, California, File No. BP-20040109ADF, Facility ID No. 87108; and KDZR, Lake Oswego, Oregon, File No. BP-20020115AAN, Facility ID No. 86618.

new and/or improved service as a result of the technically unsupportable protection rights afforded by full Class C designations. We conclude that the consistent application of our FM class rules provides the best way of fairly protecting stations that operate effectively as Class A stations in certain directions and Class C stations in others. We will therefore deny the waiver requests and dismiss the subject modification applications.”

Letter to Marissa G. Repp, Esquire, DA 04-3554, released November 9, 2004 and published at 2004 WL 2534326 (Audio Division, 2004).

9. The same situation exists here. Under the doctrine of *Melody Music v. FCC*, 345 F.2d 730 (DC Cir., 1965), all similarly situated applicants must be treated with parity. An allocations system based upon waivers and *ad hoc* decisions is always subject to arguments as to whether a particular decision complies with the doctrine of *Melody Music*. Substantial staff time is consumed, each time a waiver request is filed. And, in the case of the Expanded Band, waiver requests are inevitable because, as we have shown, the current allotment scheme does not take into account the poor propagation characteristics of the frequencies which comprise the Expanded Band.

10. Currently, licensees in the Expanded Band are “locked down.” No rules exist for them to increase power or make other improvements in their facilities. That is an intolerable situation. If rules are not enacted to provide these licensees with some flexibility, there will inevitably be repeated requests for waivers which run afoul of the very principles enunciated in the *Repp* and *Melody Music* cases.

III. The Rule Changes That We Propose Offer Opportunities To Expanded Band Licensees, Without Jeopardizing Any Licensee's Opportunity to Operate Its Expanded Band Station Without Electrical Interference.

11. The rule changes that we propose offer an opportunity for each Expanded Band licensee to improve its facilities, if it wishes to do so. However, nobody is being forced to do anything at all. If a licensee elects to expand its facilities it may do so either non-directionally, or by using a directional antenna. On the other hand, if a licensee elects to do absolutely nothing, it will still be fully protected from electrical interference. That is because the Class B Rules which we propose to apply, incorporate strict measures to protect stations from electrical interference.

12. In our Petition for Rulemaking, we discussed the background of this matter. It is appropriate to do so again, in these Comments.

13. In the 1930's, the Federal Radio Commission, and its successor, the Federal Communications Commission, regulated radio broadcasting essentially as a common carrier. When an application was filed for a new station, the applicant was required to show that there was a "need" for that additional station.³ As a result of this type of regulation, the number of stations was held artificially low. In fact, the total number of stations authorized in the country in 1938 was only 660. *NBC v. U. S. and CBS*, 319 U.S. 190 (1943) at p. 197.

14. In 1940, however, the United States Supreme Court found that Congress had intended to leave the business of radio broadcasting to the area of free competition. *Sanders Brothers Radio Station v. FCC*, 309 U.S. 470 (1940). As a result, the FCC could no longer require a showing of need for new stations and the stage was set for an explosion in the number of authorized stations when World War II ended, in 1945.

³ Cases describing the system are long since out of print. However, they are described and cited at pages 53:345 and 53:353 of Pike & Fischer's Consolidated Digest.

15. That explosion did, in fact, take place. Furthermore, it took place under rules which expressly sanctioned interference between stations, so long as the need for the new service outweighed the loss of service created by the interference. *Albertson v. FCC*, 100 U.S. App. DC 103, 243 F.2d 209 (DC Cir., 1957); *Interstate Broadcasting Co. v. FCC*, 105 U.S. App. DC 224, 265 F.2d 598 (DC Cir., 1959).⁴

16. By 1962, the number of AM broadcast stations had grown to 3,871, congestion in the AM band was becoming a problem, and the Commission determined that the time had come to reevaluate its AM broadcast rules.

17. On May 10, 1962, the Commission imposed a freeze on the acceptance of standard broadcast applications, pending consideration in a rulemaking proceeding of basic issues pertaining to the assignment of such facilities. *Interim Criteria to Govern Acceptance of Standard Broadcast Applications*, 23 Pike & Fischer RR 1545 (1962).

18. On July 7, 1964, the freeze was lifted and the Commission adopted a *Report and Order* making changes in its AM Assignment Standards. *AM Assignment Standards and the Relationship Between AM and FM Broadcast Services*, 2 RR 2d 1658 (1964). The old system, in which interference was evaluated to determine whether the need for new service outweighed the loss of service resulting from interference, was replaced with a new go/no-go system, based on contour overlaps. If an application would result in a prohibited overlap of contours with another station, the application was not to be accepted for filing. There were, however, exceptions. Overlap was permitted, for example, in the case of a first local transmission service to a community. Also, the

⁴ If a proposed facility caused interference at an existing station, the practice was to designate the application for hearing on issues calling for a determination of whether the need for the new service outweighed the loss of service resulting from the interference. For a few examples, see *Babylon-Bayshore Broadcasting Corp.*, 22 FCC 1191 (1957); *Noble-DeKalb Broadcasting Co., Inc.*, 24 FCC 43 (1958); *Plainview Radio, Inc.*, 24 FCC 405 (1958).

Commission made no changes in its definitions of what constituted “interference.” As a result, these 1964 reforms did not greatly inhibit continued growth in the AM broadcast service.

19. By 1987, the number of AM stations operating in the United States had increased to 4,900 and the Commission issued a Notice of Inquiry, looking towards an overall review of the technical assignment criteria for the AM broadcast service. *In re: Review of Technical Criteria of the AM Broadcast Service*, 5 FCC Rcd 5014 (1987) (For the number of stations, see paragraph 7). As a result of the Notice of Inquiry, a *Report and Order* was issued on October 25, 1991, and published at 6 FCC Rcd 6273 (1991). In the *Report and Order*, at paragraph 4, the Commission recited several changes, which it had already made in the AM Assignment Standards, in an effort to resolve issues pertaining to congestion in the band. These actions included improving the Commission’s prediction of ground wave and nighttime sky wave service and interference,⁵ accepting interference-reducing applications without competing applications,⁶ eliminating grandfathered deleted AM station assignments,⁷ and adopting new emissions standards for adjacent channel interference to improve aural fidelity⁸. In addition, the Commission made fundamental changes in its technical assignment criteria. Prohibited overlap between stations on adjacent channels was changed from the standard which allowed an overlap of the 0.5 mV and 0.5 mV/m contours to a standard which prohibited any overlap between the 0.5 mV and the 0.25 mV/m contours of stations

⁵ *Ground Wave and Nighttime Sky Wave Service and Interference*, 5 FCC Rcd 4489 (1990); 5 FCC Rcd 4482 (1990)

⁶ 5 FCC Rcd 4492 (1990)

⁷ *Id.*

⁸ 4 FCC Rcd 3835 (1989); recon. denied; 5 FCC Rcd 2598 (1990); 5 FCC Rcd 5191 (1990)

operating on adjacencies. Additionally, for the first time, the Commission provided adjacent channel protection to nighttime sky wave contours. In short, the Commission “did it right” this time, and tightened up the technical standards to ensure that the congestion which had been created from the systems used in prior years would not occur again.

20. The Class B Rules, which we seek to extend to the Expanded Band licensees, incorporate all the reforms described above, including the important 1991 reforms. Thus, licensees in the Expanded Band who choose to improve their facilities will be required to do so, only by extending full protection from interference to other Class B stations in the Expanded Band and in the regular AM Broadcast Band. On the other hand, if an Expanded Band licensee chooses not to improve its facilities at all, it will still be protected, completely, from interference from other Expanded Band licensees who choose to make improvements in their stations. Thus, the application of the Class B rules to the Expanded Band is a “win-win” situation; many will benefit, while none will suffer a detriment. The initial Expanded Band allotments were made using an arbitrary 400-800 km distance spacing between co-channel stations, *Implementation of the AM Expanded Band Allotment Plan*, 10 FCC Rcd 12,143 (1995). With the substitution of real world rules which take into account actual ground conductivity and nighttime sky wave protection (as we propose), all, or virtually all, Expanded Band licensees should be able to achieve substantial facilities improvements on a non-directional basis. Still more improvements are possible, if directional antennas are employed to eliminate interference. Directional antennas are a proven tool, used to eliminate interference and

also to direct signals over areas which require service. There is no good reason not to allow them, although the rules that we propose would not require anybody to use them.

IV. Conclusion

21. We have shown that, due to the extremely poor radio propagation characteristics of the Expanded Band, licensees of stations in the Expanded Band require more operating power in order to achieve parity with their brethren, operating in the regular AM Band. We have also shown that, by applying the Class B Rules to Expanded Band stations – rules that incorporate all of the important reforms adopted by the Commission to ensure absence of interference – Expanded Band licensees can be given the flexibility that they require in order to properly serve their communities, without any danger that their expanded facilities will create any interference to or from other Expanded Band stations, or stations operating in the regular AM Band. Finally, we have shown that the present system for granting facilities improvements to Expanded Band licensees is based upon *ad hoc* waivers and is, therefore, very complicated and difficult to administer, consumes an excessive amount of FCC staff time and resources, and is likely to produce anomalous and inconsistent results. It needs, therefore, to be replaced with a system based upon uniform rules, uniformly applied, such as what we propose.

22. In short, we have demonstrated that, by giving Expanded Band licensees the same privileges that are already extended to licensees of other Class B stations, Expanded Band licensees will be enabled to improve their facilities to properly serve their communities without creating any potential for electrical interference to or from other stations. Our proposal is, therefore a “win-win” proposition. Licensees who choose to take advantage of the Class B Rules will be enabled to immensely improve

their coverage of their communities of license. At the same time, however, licensees who choose to retain their present facilities will be fully protected from interference.

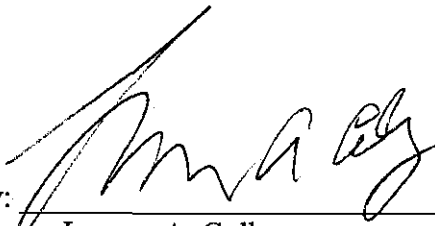
23. The Commission should, therefore, issue a Notice of Proposed Rulemaking, looking towards the rule changes contemplated by the Petitioners.

Respectfully submitted,

February 1, 2005


INTERMART BROADCASTING OF
GEORGIA, INC.

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

By: 
Lauren A. Colby
Its Attorney

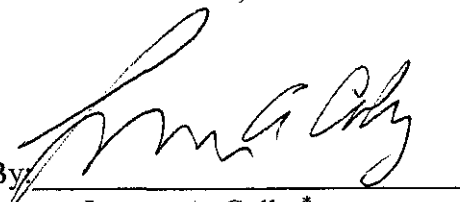
RAMA COMMUNICATIONS, INC.

PUTBRESE HUNSAKER
& TRENT, PC
200 South Church Street
Woodstock, VA 22664

By: 
John C. Trent
Its Attorney

MULTICULTURAL RADIO
BROADCASTING, INC.

Law Office of
LAUREN A. COLBY
10 E. Fourth Street
PO Box 113
Frederick, Maryland 21705-0113

By: 
Lauren A. Colby*
Its Attorney

* Lauren A. Colby is acting as special counsel for Multicultural Radio Broadcasting, Inc. in this proceeding only.

EXHIBIT A

Technical Statement Expanded Band Comparison

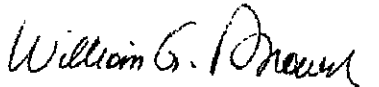
This statement is the result of a power comparison study showing the relationship between stations operating in the lower portion of the AM Broadcast Band (540 kHz) and those operating in the expanded band frequencies (1610-1700 kHz). It should be noted that since all expanded band frequencies utilize the same FCC Family of Curves, the distance calculations for all of the frequencies in the expanded band are the same.

For this comparison, we assume a ground conductivity of 8 mS/m (typical for mid-America). We also assumed a non-directional antenna system with a 90-degree antenna and ground system at the operating frequency.

We calculated the distance to the 0.5 mV/m contour for a station operating under these standard conditions in the expanded band with a power of 10 kW. This station provides a 0.5 mV/m signal for a distance of 70.6 km. We then changed the frequency to 540 kHz with the same standard conditions except we reduced the power of the 540 station to closely match the same distance to the 0.5 mV/m signal as the expanded band station. The 540 kHz station operating with 60 Watts will provide 0.5 mV/m service to a distance of 71.34 km.

Thus this study shows a station operating on 540 kHz with 60 Watts will provide the same service as the expanded band station with 10 kW.

Bromo Communications, Inc.



William G. Brown,
Technical Consultant